UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF IOWA EASTERN DIVISION

| NATIONAL SURETY CORPORATION, |) |
|---------------------------------|----------------------|
| Plaintiff, |) No. 13 cv 2004 EJM |
| VS. |) |
| |) ORDER |
| DUSTEX CORPORATION, MIRON |) |
| CONSTRUCTION CO., INC., and |) |
| BOARD OF TRUSTEES OF | j |
| MUNICIPAL ELECTRIC UTILITY OF | í |
| THE CITY OF CEDAR FALLS, IOWA, | Ś |
| | j |
| Defendants. | j · |

This matter is before the court on the resisted Report and Recommendation (R&R) of the Magistrate Judge, filed March 10, 2015. Accepted.

This case involves an insurer seeking declaratory judgment that it does not owe indemnity and defense arising from an arbitration award. Jurisdiction under 28 U.S.C. §1332.

This court granted partial summary judgment to plaintiff on May 9, 2014, declaring that the commercial general liability insurance policy did not cover defendants' loss from the arbitration award, leaving only defendants' equitable affirmative defense of estoppel remaining to be tried. The court then referred this matter to the Magistrate Judge under 28 U.S.C. §636(b) to conduct an evidentiary hearing on defendants' affirmative defense of equitable estoppel, and file an R&R.

The Magistrate Judge conducted the hearing from January 20-21, 2015, and filed his R&R on March 10, 2015. The R&R finds that plaintiff provided timely,

adequate and sufficient notice that it was defending the action under a reservation of rights, that defendant knew or should have known this, that there was no reliance or prejudice, and that the equitable affirmative defense estoppel did not apply here.

It is therefore

ORDERED

R&R accepted. Judgment for plaintiff.

May 19, 2015

Edward J. McManus, Judge

UNITED STATES DISTRICT COURT